Article - Criminal Procedure

[Previous][Next]

§8–201.

(a) (1) In this section the following words have the meanings indicated.

(2) "Biological evidence" includes, but is not limited to, any blood, hair, saliva, semen, epithelial cells, buccal cells, or other bodily substances from which genetic marker groupings may be obtained.

(3) "DNA" means deoxyribonucleic acid.

(4) "Law enforcement agency" means any of the following:

(i) a municipal or county police department;

(ii) sheriff's office;

(iii) the Maryland State Police;

(iv) any prosecuting authority;

(v) any state, university, county, or municipal police unit or police force; and

(vi) any hospital, medical facility, or private entity that is conducting forensic examinations and securing biological evidence related to criminal investigations.

(5) "Scientific identification evidence" means evidence that:

(i) is related to an investigation or prosecution that resulted in a judgment of conviction;

(ii) is in the actual or constructive possession of a law enforcement agency or agent of a law enforcement agency; and

(iii) contains biological evidence from which DNA may be recovered that may produce exculpatory or mitigating evidence relevant to a claim of a convicted person of wrongful conviction or sentencing if subject to DNA testing.

(b) Notwithstanding any other law governing postconviction relief, a person who is convicted of a crime of violence under § 14–101 of the Criminal Law Article may file a petition:

(1) for DNA testing of scientific identification evidence that the State possesses that is related to the judgment of conviction; or

(2) for a search by a law enforcement agency of a law enforcement data base or log for the purpose of identifying the source of physical evidence used for DNA testing.

(c) A petitioner may move for a new trial under this section on the grounds that the conviction was based on unreliable scientific identification evidence and a substantial possibility exists that the petitioner would not have been convicted without the evidence.

(d) (1) Subject to subsection (f) of this section, if a petitioner was convicted as the result of a trial, a guilty plea, an Alford plea, or a plea of nolo contendere, a court shall order DNA testing if the court finds that:

(i) a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing; and

(ii) the requested DNA test employs a method of testing generally accepted within the relevant scientific community.

(2) A court shall order a data base search by a law enforcement agency if the court finds that a reasonable probability exists that the data base search will produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing.

(e) (1) A petitioner shall notify the State in writing of the filing of a petition under this section.

(2) The State may file a response to the petition within 15 days after notice of the filing or within the time that the court orders.

(f) If the court orders DNA testing under subsection (d) of this section, the court in its order may issue orders the court considers appropriate, including designation of any of the following:

(1) the specific evidence to be tested;

(2) the method of testing to be used;

(3) the preservation of some of the sample for replicate testing and analysis;

(4) the laboratory where the testing is to be performed, provided that if the parties cannot agree on a laboratory, the court may approve testing at any laboratory accredited by the American Society of Crime Laboratory Directors (ASCLAD), the Laboratory Accreditation Board (LAB), or the National Forensic Science Technology Center; and

(5) release of biological evidence by a third party.

(g) (1) Except as provided in paragraph (2) of this subsection, DNA testing ordered under subsection (d) of this section shall be conducted as soon as practicable.

(2) Based on a finding of necessity, the court may order the DNA testing to be completed by a date that the court provides.

(h) (1) Except as provided in paragraph (2) of this subsection, the petitioner shall pay the cost of DNA testing ordered under subsection (d) of this section.

(2) If the results of the DNA testing that the court orders under this section are favorable to the petitioner, the court shall order the State to pay the costs of the testing.

(i) (1) If the results of the postconviction DNA testing are unfavorable to the petitioner, the court shall dismiss the petition.

(2) If the petitioner was convicted as the result of a trial and the results of the postconviction DNA testing are favorable to the petitioner, the court shall:

(i) if no postconviction proceeding has been previously initiated by the petitioner under § 7–102 of this article, open a postconviction proceeding under § 7–102 of this article;

(ii) if a postconviction proceeding has been previously initiated by the petitioner under § 7–102 of this article, reopen a postconviction proceeding under § 7–104 of this article; or

(iii) on a finding that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial, order a new trial.

(3) If the court finds that a substantial possibility does not exist under paragraph (2)(iii) of this subsection, the court may order a new trial if the court determines that the action is in the interest of justice.

(4) (i) If the petitioner was convicted as the result of a guilty plea, an Alford plea, or a plea of nolo contendere and the court determines that the DNA test results establish by clear and convincing evidence the petitioner's actual innocence of the offense or offenses that are the subject of the petitioner's motion, the court may, as the court considers appropriate:

1. if no postconviction proceeding has been previously initiated by the petitioner under § 7–102 of this article, open a postconviction proceeding under § 7–102 of this article;

2. if a postconviction proceeding has been previously initiated by the petitioner under § 7–102 of this article, reopen a postconviction proceeding under § 7–104 of this article; or

3. set aside the conviction and schedule the matter for trial.

(ii) When assessing the impact of the DNA test results on the strength of the State's case against the petitioner at the time the plea was entered, the court may consider, in addition to evidence that was presented as part of the factual support of the plea, admissible evidence submitted by either party that was contained in law enforcement files in existence at the time the plea was entered.

(iii) When determining an appropriate remedy under this paragraph, the court may consider any additional admissible evidence submitted by either party that came into existence after the plea was entered and is relevant to the petitioner's claim of actual innocence.

(5) If a new trial is granted or the matter is scheduled for trial, the court may order the release of the petitioner on bond or on conditions that the court finds will reasonably assure the presence of the petitioner at trial.

(j) (1) The State shall preserve scientific identification evidence that:

(i) the State has reason to know contains DNA material; and

(ii) is secured in connection with a violation of § 2–201, § 2–204, § 2–207, § 3–303, or § 3–304 of the Criminal Law Article.

(2) The State shall preserve scientific identification evidence described in paragraph (1) of this subsection for the time of the sentence, including any consecutive sentence imposed in connection with the offense.

(3) (i) If the State is unable to produce scientific identification evidence described in paragraph (1) of this subsection, the court shall hold a hearing to determine whether the failure to produce evidence was the result of intentional and willful destruction.

(ii) If the court determines at a hearing under subparagraph (i) of this paragraph that the failure to produce evidence was the result of intentional and willful destruction, the court shall:

1. order a postconviction hearing to be conducted in accordance with subparagraph (iii) of this paragraph; and

2. at the postconviction hearing infer that the results of the postconviction DNA testing would have been favorable to the petitioner.

(iii) 1. A court ordering a postconviction hearing under subparagraph (ii) of this paragraph shall open the postconviction hearing under § 7–102 of this article, if no postconviction hearing has been previously initiated by the petitioner under § 7–102 of this article.

2. A court ordering a postconviction hearing under subparagraph (ii) of this paragraph shall reopen the postconviction hearing under § 7–104 of this article, if a postconviction hearing has been previously initiated by the petitioner under § 7–102 of this article.

(4) The State shall make the scientific identification evidence available to parties in the case under terms that are mutually agreed on between them.

(5) If an agreement cannot be reached, the party requesting the testing may file an application in the circuit court that entered the judgment for an order setting the terms under which the evidence will be made available for testing.

(k) (1) The State may dispose of scientific identification evidence before the expiration of the time period described in subsection (j) of this section if the State notifies the following persons:

(i) the person who is incarcerated in connection with the case;

(ii) any attorney of record for the person incarcerated; and

(iii) the Office of Public Defender for the judicial district in which the judgment of conviction was entered.

(2) The notification required in paragraph (1) of this subsection shall include:

(i) a description of the scientific identification evidence;

(ii) a statement that the State intends to dispose of the evidence;

(iii) a statement that the State will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service in the circuit court that entered the judgment; and

(iv) the name and mailing address of the circuit court where an objection may be filed.

(3) Unless another law or court order requires the preservation of the scientific identification evidence, if no objection to the disposition of the evidence is filed within 120 days of the notice required under this subsection, the State may dispose of the evidence.

(4) If a person files written objections to the State's notice that it intends to dispose of scientific identification evidence, the court shall hold a hearing on the proposed disposition of the evidence and at the conclusion of the hearing, if the court determines by a preponderance of the evidence that:

(i) the evidence has no significant value for forensic science analysis, the court may order the return of the evidence to its rightful owner, the destruction of the evidence, or other disposition as provided by law; or

(ii) the evidence is of such size, bulk, or physical character that it cannot practicably be retained by a law enforcement agency, on a showing of need, the court shall order that the evidence be made available to the party objecting to the disposition of the evidence for the purpose of obtaining representative samples from the evidence in the form of cuttings, swabs, or other means, prior to the release or destruction of the evidence.

(5) If the court orders that representative samples be made available under paragraph (4)(ii) of this subsection, the court shall further order that the samples be obtained by a qualified crime scene technician acting on behalf of the party seeking to obtain the samples or by the law enforcement agency in possession of the evidence, which also shall preserve and store the representative samples until the representative samples are released to the custody of a DNA testing facility.

(6) An appeal to the court of appeals may be taken from an order entered under this section.

[Previous][Next]